IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4326 of 2005

Date of Decision: 17.10.2006

Pawan Kumar ...Petitioner

Vs.

Raj Kumar and Ors. ..Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Arun Jain, Advocate,
for the petitioner.

Mr.S.S.Saini, Advocate,
for the respondents.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the order dated 5.8.2005 passed by the learned Civil Judge (Senior Division), Hoshiarpur declining the application moved by the petitioner for leading additional evidence in support of Issue No.3 which reads as under:

" Whether the suit of the plaintiff is barred under Order 23 Rule 1 CPC."

By way of additional evidence, the petitioner wanted to produce certified copy of the statement made by the counsel for the respondents herein in the previous suit as well as the certified copy of the order passed by the court on the basis of the said statement.

The case of the petitioner was that the said evidence is per se admissible and is necessary for just and proper adjudication of the case to record a finding on issue No.3. The said application has been declined by the learned Trial Court on the ground that the provisions of Order 18 Rule 17-A of the Code of Civil Procedure (for short the Code) stand deleted and secondly for the reason that the said evidence was within the knowledge of the petitioner when the evidence was led and same could not be allowed after passage of so much of time.

The findings recorded by the learned Trial Court cannot be sustained as in spite of deletion of Order 18 Rule 17-A of the Code the court has inherent power to allow additional evidence in case it is necessary for just and proper adjudication of the case. Once it is proved on record that the evidence was necessary and otherwise also the evidence sought to be produced was per se admissible in evidence, delay could not stand in the way of allowing the application.

Learned counsel for the respondents placed reliance on the judgment of this Court in **Lakhbir Singh & Ors. Vs. Kesar Kaur and Ors. 1984 C.L.J. (C&Cr.) 599** to contend that in case application for additional evidence is made at the time of arguments when the same was within the knowledge of party and the said application is dismissed it is no ground for interference by the Court. The learned counsel for the petitioner also placed reliance on the judgment of this Court in **Shri Gaurav Nagpal Vs. Smt. Sumedha Nagpal 2005 (1) Latest Judicial Reports 403** to contend that High Court would interfere under Article 227 of the constitution of India only when it is established that the learned Trial Court has been guilty of grave dereliction of duty and flagrant abuse of power resulting into grave

injustice to party to the litigation.

There can be no dispute with the proposition laid down in the authorities referred to above. However, under Article 227 of the Constitution of India the powers can always be exercised to correct an error in the judgment of the learned Trial Court which causes injustice to a party. In the present case for rejecting the application the learned Trial Court has shut a material piece of evidence which goes to the roots of the matter and is required for just and proper adjudication of the case.

As already observed the Hon'ble Supreme Court in **Salem Advocate bar Association, Tamil Nadu Vs. Union of India AIR 2005 Supreme Court 3353** has held that in spite of deletion of provisions of Order 18 Rule 17-A of the Code by amending Act of 2002, the right to produce evidence at later stage by way of additional evidence is not taken away as the Court has always inherent power to exercise the jurisdiction of advancement of justice under Section 151 of the Code.

Accordingly this revision petition is allowed. The impugned order passed by the learned Trial Court is set aside. The petitioner is allowed to lead secondary evidence by producing certified copy of the statement of the counsel as well as the certified copy of the order passed by the court.

(Vinod K.Sharma)
17.10.2006 Judge
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